

## SPEECH

OF

HON. JOHN S. PHELPS, OF MISSOURI,

IN THE HOUSE OF REPRESENTATIVES, JUNE 8, 1850,

*The House being in Committee of the Whole on the state of the Union, on the President's Message transmitting the constitution of California.*

Mr. PHELPS said:

Mr. CHAIRMAN: It would have been gratifying to me, sir, to have been so fortunate as to have obtained the floor at an earlier day, in order to have expressed the opinions I entertain upon the subject under discussion. Although I am not vain enough to suppose that anything I shall say will change the opinions or the course of conduct of any member of this committee, yet I desire to express to the committee and to the country, and especially to my constituents—to those whom I have the honor to represent on this floor, and to whom I am responsible—the opinions which I entertain in relation to the question under consideration, and other questions connected with it. It is with this view, Mr. Chairman, that I have, at this time, obtained the floor.

The war with Mexico resulted, as was expected by everybody, in the acquisition of territory, vast in extent and ample in resources, sufficient of itself to form a republic containing a greater area of square miles than many kingdoms of Europe, having an extent on the Pacific coast of more than nine hundred miles, and containing an area of more than five hundred thousand square miles.

Whilst gentlemen here have been extolling the prowess and valor of the troops furnished by their respective States for the Mexican war, displayed on the battle-fields of Mexico, we seem to have lost sight of the fact, that the territory we have acquired from Mexico was conquered, and the people inhabiting it were subdued, by the volunteers and emigrants from Missouri aided by a few regulars. A tributary of the Sacramento was called Rio los Americanos—the river of the Americans—in consequence of the number of American emigrants residing on it, the most of whom had emigrated from Missouri. In 1846, before the people of California were aware that war existed between this country and Mexico, the American settlers had conquered Upper California. Colonel Frémont, with his exploring party, which had been raised in Missouri, was at this time in Upper California. The Mexican authorities had attempted to drive him and his party from the country. He was invited to command the forces of the insurgents. He accepted it. In a few days the conquest of Upper California was accomplished. The stars and the stripes supplanted the Mexican flag. Missouri would not pluck one leaf from the chaplets of laurel which grace the brows of her sister States, but she justly claims the honor of subjugating the territory we have acquired from Mexico. Her sons were not called upon to participate in all of the most brilliant achievements of the late war, but their deeds are memorable, lasting, and enduring. Many of

her sons have settled on this territory. The emigration of last year from Missouri was estimated at six thousand, and the emigration of this year has been estimated at from sixteen to twenty thousand. The people of Missouri, therefore, feel a deep interest—deeper than those of any member of this Confederacy, in the question of the admission of California into the Union.

Although more than two years have elapsed since we acquired this territory, yet we have scarcely done anything for the protection of the people who are settled there. Several attempts have been made to establish territorial or State governments over these territories, but all these efforts have failed. At the same session of Congress at which the treaty of Guadalupe Hidalgo was ratified, an attempt was made to establish a territorial government for California, New Mexico, and Oregon. This bill is known as the Clayton compromise bill. It passed the Senate, was sent to this House, and was here defeated—it was laid upon the table. At the next and the last session of Congress, an effort was made to establish a territorial governments over the territories. The proposition subsequently took another form, that of the establishment of State governments for the territories, and their admission into the Union as States, without going through the preparatory stage of a territorial condition with territorial governments. All these propositions failed. What, then, let me ask you, have we done for these territories, for New Mexico and California? It is but a few days since we increased the rank and file of the army, for the purpose of protecting our citizens residing on the frontier, and the inhabitants of the territories from the incursions and ravages of the Indians, and of protecting the overland emigration to our territories on the Pacific. This overland emigration is this year estimated at more than fifty thousand souls. What else have you done? You have established a few post routes, and provided for the extension of your revenue laws in California.

You have also provided that for an infraction of those revenue laws, the offender shall be tried—not where the offence was committed—not by a jury of the vicinage—but, that he shall be carried to the Territory of Oregon, to be tried by the supreme court of that Territory, or that this trial shall be had in the district court of the State of Louisiana. You “tax them without their consent,” and you provide for their transportation, not “beyond seas,” but over seas, to be tried for alleged offences. You inflict on the people of California two of the wrongs of which our forefathers complained against Great Britain, and which contributed to the Declaration of our Independence of the mother



country. The people of California and New Mexico have not a voice in the Legislature of our country. You have denied them the right to have a delegate on the floor of this House, to make known their wants and express their wishes.

The discovery of the gold mines shortly after the acquisition of these territories, drew to them a large number of persons from the United States; it turned the tide of emigration exclusively in that direction. No country has ever before increased so rapidly in population. There was at the time of its acquisition, a scattered population of about thirteen thousand inhabiting California. We now find that she has a population of upwards of one hundred thousand; and this immense population was left by Congress without the protection of law. The opinion was prevalent in this Hall at the last session, that if Congress adjourned without providing for the government of the people of California, the inhabitants of that country would be left to the merciless protection of the bowie-knife and revolver. The Mexican laws were attempted to be enforced, but our countrymen were unwilling to submit to them. This being their condition, it is not at all surprising they should attempt to provide laws for themselves. For this purpose, in the months of December, 1848, and January, 1849, meetings of the inhabitants, numerous attended, were held in the districts of San José, San Francisco, Monterey, Sonoma, and Sacramento City, at which resolutions were passed in favor of forming a provisional territorial government, "to be put into immediate operation, and to remain in force until Congress should discharge its duty and supersede it by a regular territorial organization."

The resolutions passed at one of these meetings recommended the convention should assemble in the month of January; those passed by another recommended the month of March. The inhabitants of some of the districts held no meetings. Subsequently, the month of May was designated as the time for the convention to meet. Twelve of the delegates elected to the convention to be held in May, met at San Francisco in March, 1849, and recommended that "new elections should be held in the several districts for delegates to meet in convention at Monterey, on the first Monday in August next;" and that those delegates "should be vested with full power to frame a State constitution, to be submitted to the people of California;" and further stating their belief that the circumstances and wants of the country were such "as to require the immediate formation of a State constitution, and entitle us to a right to be admitted into the Union of sovereign States, which, we trust, will ever be distinct, as the billows; but one, as the ocean." There is no doubt that this was then the prevailing sentiment of the people of the territory.

On the last of May, intelligence reached California that Congress had adjourned without providing a government for them. The desire of establishing a State government increased—it became almost universal. The legislative assembly of the district of San Francisco put forth an address to the people of California early in June, 1849, recommending a general convention for the purpose of organizing a government for the whole territory of California, such "conditional or temporary State government to be put into operation at the earliest practicable moment" after "its ratification by the people," and "to become a per-

manent State government when admitted into the Union." This recommendation met with universal approval.

General Riley, who had arrived there in the month of April, and had taken command of the troops stationed on the Pacific coast, and who had usurped the duties of civil governor of California, issued his proclamation recommending the election of delegates to a convention to be held at Monterey in September, for the purpose of forming a State government. The convention assembled at Monterey, and adopted a State constitution.

The plan of adopting a State government originated with the people of California themselves. It is the result not of Executive dictation and influence, but a result of republican principles—of the great American principle of self-government.

I am aware that some of my political friends have taken occasion to censure and condemn the course of the Administration. They have charged upon the Administration that by its influence in California, the people of that territory have been induced to adopt a State constitution, and demand admission into the Union. I am no defender of this Administration. It came into power without my aid, and against my exertions and wishes. That this Administration hoped—nay prayed the people of California would pursue the course they have done, I freely admit. Nay more; that it had the desire to induce the people of California to adopt a State constitution—to influence and hasten them in such a movement.

Before General Riley reached California, the adoption of a constitution and the establishment of a State government were foregone conclusions. The State of California is not the offspring—the child of this Administration. The Administration is too impotent to beget such a child. Such a vigorous child could only spring from public sentiment. The State of California, as did Minerva from Jupiter's brain, sprang forth from the brain of public sentiment, a full-grown person, clad in the same habiliments and entitled to the same rights as their elder sisters. This Administration is too imbecile even to have performed the part of Vulcan in bringing this youngest sister into the Confederacy.

To show what was the feeling of the people of California, I will read from the memorial of the Senators and Representatives elect of that State. They say:

"It was not from any desire to establish a State government in opposition to, or regardless of, the wishes and rights of the people of the United States, that the people of California pursued this course. No improper motives, no ambitious impulses, no Executive influence, prompted their action. They believed that their brethren on the Atlantic appreciated their sufferings, admitted their patriotism, and would hail their action with joy. They thought that the Congress of the United States would instantly open its doors to their delegated Representatives and that the State would be immediately and gladly admitted. To this impression the tone of the public press, the dispatches of executive officers, and the speeches of distinguished statesmen in Congress, had contributed in a very great degree; and as nothing of a contrary character had ever reached the Pacific shores, it is not surprising that the sentiment became a general one. The daily arriving emigration added their corroborated evidence to the already general belief; and it finally came to be credited that the great public of the Atlantic States were as ardently and unanimously in favor of the admission of California as were her own citizens. They did not anticipate delay, and consequently could not perceive or guard against a contingency arising from such a state of things. They believed their action to be eminently right and necessary, and that it would be sanctioned by the approving voice of the American people."

I now advert to the course pursued in Congress



towards California, and more particularly to the course pursued at its last session. And first I speak of the course pursued by this House, at the time when a bill was proposed here by a gentleman from Virginia, (Mr. Preston,) and now Secretary of the Navy. That bill proposed to admit all the territory of California into the Union as a State. A gentleman from Alabama [Mr. HILGARD] gave notice of his intention to ask leave to introduce a bill providing for the admission of the State of California into the Union, and subsequently asked such leave, but the bill was not introduced. At that time, in this very Hall, when a measure for admitting California into the Union as a State was proposed, it was advocated by southern gentlemen.

What was the course pursued in the Senate? As early as December, 1848, a bill was introduced by Mr. DOUGLAS, Senator from Illinois, which provided for the admission of all the territory acquired from Mexico by the treaty of peace into the Union as a State, but, in the opinion of the Committee on the Judiciary, it actually created the State. That bill was referred to the Committee on the Judiciary, and that committee reported adversely to the bill. In their report the committee declare:

"The power conferred by the Constitution is to *admit new States*, not to *create* them. According to the theory of our Government, the creation of a State is an act of popular sovereignty, not of ordinary legislation. It is by the will of the people of whom the State is composed, assembled in convention, that it is created. Congress may provide for the assembling of a convention, but it is the will of the people, expressed in that convention, which alone creates the State; and until that is done, the power conferred by the Constitution on Congress 'to *admit new States*' into the Union, is not called into exercise. There is nothing upon which it can operate. In the opinion of the committee, then, this bill ought not to pass, because it proposes the exercise by Congress of a power not vested by the Constitution in the national legislature, namely, the *creation of a State*."

Mr. DOWNS, a Senator from Louisiana, made a minority report, in which he advocated the right of Congress to admit into the Union States in advance of the adoption of the constitution by the people residing within the limits of the proposed State. He also was in favor of curtailing the limits of the State of California, making the summit of the Sierra Nevada its eastern boundary and the parallel of 34° 30' north latitude its southern boundary.

That bill, together with several amendments, of which notice had been given in the Senate they could be offered, was subsequently referred to a select committee, composed of the following-named members: Messrs. DOUGLAS of Illinois, JOHNSON of Maryland, JONES of Iowa, CLAYTON of Delaware, DAVIS of Mississippi, BADGER of North Carolina, and NILES of Connecticut—four members from the slaveholding and three from the non-slaveholding States, four Democrats and three Whigs. Thus was this committee constituted which was to consider the propriety of admitting States into the Union in advance of the inhabitants of the territory having adopted a constitution, or in advance of being an organized community, and before that community had ever expressed a desire to be admitted into this Union. Within the large and legitimate scope of their inquiries came the question of size, dimensions, and boundaries of the State or States, and whether the limits of the proposed State contained the number of inhabitants within its bounds proper to assume upon themselves the conduct and management of the

affairs of a State without doing injustice to other members of this Confederacy. It has usually (if not always) been required, that a new State shall contain within its limits a representative population equal to the ratio, for the time being, by which representatives are apportioned among States.

That committee, after giving to the subject all the consideration which they were enabled to do, presented to the Senate a bill providing for the admission not only of California into the Union, but for the admission of New Mexico. All the territories which we had acquired from Mexico were, by the provisions and terms of that bill, to be received into the Union, and to be included in two States, each of which, if the territory had been equally divided between them, would have contained more than two hundred and fifty thousand square miles. That bill provided that the acting Governor of California should lay off the proposed State into districts for the election of delegates to a convention, to form a State constitution—that he should designate the time and place of holding the election for each district, appoint the officers for holding said election, apportion the delegates amongst the several districts according to the number of legal voters, and should appoint the time and place for the assembling the convention. The bill prescribed the qualifications of voters and the number of delegates of which the convention might be composed. It was further provided, that as soon as a constitution and State government shall have been established, and the President notified thereof, he should issue his proclamation declaring California to be one of the States of this Union.

This report received the approbation of every member of the committee, for there is no dissent of any member of that committee expressed. This report was made on the 29th of January, 1849, and no vote was taken on the bill. Mr. BELL, of Tennessee, offered, as an amendment to the civil and diplomatic appropriation bill, a provision for the admission of California, and embracing all the territory we had acquired from Mexico.

These are the propositions which were made in Congress, and I cite them as evidence of the opinion which prevailed among the representatives of that portion of the Union from which I come, for all of them were proposed by southern men, except the bill introduced by Mr. DOUGLAS. They were in favor of admitting California into the Union as a State, with double the area of the State of California as now proposed, and containing then only a population of about twenty-six thousand souls, composed as follows:

Californians .....	13,000
Americans .....	8,000
Foreigners .....	5,000

Total.....26,000

In this way it was expected the difficulties growing out of this vexed question of slavery would be avoided and adjusted.

These bills had received not only the approbation of members of Congress, but of the Democratic press. The organ of the party, published in this city, (the "*Union*," I mean,) edited by Thomas Ritchie, Esq., the oldest editor in the Union, I believe, and therefore styled Father Ritchie—father of the American press, father of the editorial corps—approved of the measure of admitting California into the Union with the limits I have stated, and with its very scanty population.



Nay, more; he urged upon Congress the passage of that bill with pertinacity and zeal. I have a few extracts from the *Union*, which I will read.

Extract from an article in the *Union* of January 28th, 1849, headed "Convention of Southern Members:"

"We must conclude our remarks for the present, by earnestly requesting our members of Congress to settle this territorial question which has caused so much bitterness and strife. *Slaves may never, under any adjustment, be carried into California.* Why, then, cannot a bill be passed, which would save the honor of the slaveholding States? No territorial bill can be passed unclogged by the Wilmot proviso, and the Wilmot proviso cannot be passed at this session. *Then why not provide for the admittance of California into the Union, and let her settle the question of slavery for herself?* Then the honor of the South will be saved. In a short time, even before another session of Congress, her population will number one hundred and fifty thousand souls, and she can then demand admittance as a right, when Congress shall have convened."

That was the doctrine put forth by the editor of the organ of the Democratic party, published in this city, that California at the next session could demand admittance into the Union as a matter of right. The editor of that paper was not content with merely calling the attention of members of Congress and the public to the subject *once*, but in three other articles he subsequently advocated the same doctrine, and expressed himself still more strongly in favor of that bill. In speaking of the report of the select committee, on the 4th of February, 1849, Thomas Ritchie, the editor, discourses as follows:

"The South contends for her honor and for the great principles of non-intervention and State equality. *Why, then, cannot all unite and permit California to come into the Union as soon as she can frame a constitution?* Then, according to the doctrines which prevail on both sides of Mason and Dixon's line, she may constitutionally establish her domestic institutions on any basis consistent with republican principles. *The South could lose nothing by adopting this course. On the contrary, she would save all for which she contends.* The act authorizing the convention to frame a government for California, would be silent on the subject of slavery, and the rights of the slaveholder would not be trampled on, nor would his feelings be outraged. \* \* \*

"Any territorial government is impracticable, for none can receive the sanction of Congress which does not contain the Wilmot restriction. We have, then, to choose between the scheme of Mr. Douglas, and no action; and if Congress adjourns without action, both sections of the Union will at once be aroused. Bitter feelings will gain the ascendant, leaving a long train of disastrous circumstances which no man can distinctly estimate. *Therefore we earnestly hope that the bill reported by Senator Douglas will meet with the favorable consideration of Congress as the only feasible plan of extending protection to her citizens, and restoring the tranquility of the country.*"

In another article, published on the 8th of February, 1849, the editor remarked:

"But three weeks and three days are allowed for action, and we respectfully urge that they be improved. Let some scheme be adopted which saves the rights and honor of the States, and leaves the people of the territory to determine for themselves the character of their domestic institutions. That is the proper tribunal to decide this great question. Such a measure has already been brought forward, and the choice is between *that* alternative and an adjournment of Congress without action—leaving California to its fate. No territorial bill can be passed without the Wilmot restriction. *If this fact be so, then the admission of the territory in the form of States is all that is left; and we fervently hope that we will not forever lose the benefit of that arrangement by mischievous delay and by fatal ultraism.*"

And in another article, on the 15th of February, 1849, he remarks:

"It has been ascertained without doubt, that no form of territorial government, under the authority of Congress, can pass the House of Representatives without being trammelled with the Wilmot proviso or slavery restriction. It is equally certain no bill with the restriction can become a law. *What, then, can be done? Is there any other mode in which the difficulty can be solved? In our judgment there is; and that mode*

*is to provide at once for the admission of the acquired territories of California and New Mexico into the Union as States, as soon as they shall form republican constitutions as proposed by the select committee in the report made by Senator Douglas as its chairman, or as proposed in the minority report of Senator Downs of the Judiciary Committee. By this mode the question of the Wilmot proviso is avoided. No member of Congress from the North or from the South compromises any constitutional or other principle. Nothing is said about slavery or the Wilmot proviso—but in providing for the admission of the acquired territories into the Union as States, this, as well as all other domestic or municipal regulations is left to the inhabitants who are to govern themselves. No southern man can justify himself in denying to them this right."* \* \* \*

"We understand that some of the southern members are objecting to the bill. We have respectfully weighed their arguments, but we cannot attach the same importance to them which they do. 'Will you,' say they, 'give up all southern claim at once to California, and not only surrender her, but admit her two Senators at the next session to assist the other Senators from the non-slaveholding States in fastening the Wilmot proviso upon New Mexico?' *We answer frankly, we have no idea that California can ever become a slaveholding State. Messrs. R. J. WALKER, BUCHANAN, and CASS, in their respective letters, expressed the unqualified opinion that it could never become such a State; that the nature of the soil and climate forbids it.* But independently of these suggestions, we refer to the character of the population for the answer. There are very few negroes among them as laborers. The great mass of the people who are already there, and who are emigrating to her land, consist of American citizens and foreigners who are opposed to slavery. What benefit can the South obtain from delay?"

"*The people of California, we hope, will prove true to the Union; in which case they will form a provisional government for their own protection, and they will call a convention to frame a constitution. They will knock at the doors of the next Congress for admission as a State; and the strong presumption is, that she will then be admitted.*"

These were the doctrines advocated by the organ of the Democratic party in this city. It is the doctrine, too, upon which it was supposed every Democrat at that time stood—the doctrine of non-intervention—the right of American citizens inhabiting the territories to settle the question of slavery for themselves, in such manner as might suit them, and demand admission into the Union, after having adopted a republican form of government.

Mr. AVERETT. Will the gentleman allow me to ask him a question in this connection?

Mr. PHELPS. Certainly, sir.

Mr. AVERETT. Does the gentleman mean to say that those views put forth by the "*Union*," were generally approved by the Democratic party of the South, or by the people generally of the South? If he does, he must allow me to say to him, that at that time I was a member of the Senate of Virginia, and so far as I knew, they were utterly repudiated by Whigs and Democrats.

Mr. PHELPS. In reply to the interrogatory of the gentleman, I have this to say: I cannot vouch for the sentiment that prevailed in Virginia, or within the limits of the gentleman's district, I only speak of the opinions that were promulgated and maintained here. Many southern gentlemen were ready, I know, to admit California into the Union at that time, though I doubted the propriety of her admission then. I thought the people of California ought to move in the matter first, as I was not satisfied that California at that time had a sufficient population to render her admission expedient.

I have remarked a bill was introduced for the admission of California into the Union by Mr. Preston, then a Representative from Virginia, and which bill was endorsed by Governor McDOWELL, then and now a Representative from the same State. Well do I recollect his able speech, breathing the spirit of harmony, conciliation and com-



promise, which was listened to with profound attention by the members of this House, in which he endorsed the plan of admitting California into the Union as a State at that session.

I spoke of the sentiments which prevailed amongst southern members of Congress at that session, and I believe a majority of them approved of that measure. I believe those articles expressed the sentiments of my constituents.

Mr. FEATHERSTON. With the gentleman's permission, I desire to know upon what authority he bases his position that southern Democratic members of Congress were in favor of this bill during the last Congress. Has he any evidence of it? If so, I should be glad to have it brought before the House.

Mr. INGE. I only knew of one Democrat who endorsed the doctrine.

Mr. PHELPS. In reply to the gentleman from Mississippi, I say that I am aware there was no recorded vote in the House upon this question. Mr. Preston's bill was proposed as an amendment in the Committee of the Whole House on the state of the Union, and received a handsome vote, according to my recollection, from southern Representatives. The *Union* fully endorsed a proposition not differing in principle from Mr. Preston's bill.

Mr. INGE (Mr. PHELPS yielding) wished to know if the gentleman from Missouri held southern members responsible for all the opinions expressed in the columns of the *Union*?

Mr. PHELPS. No, certainly not. The columns of that paper were then open to a discussion of this proposition, and no one, that I am aware of, entered his dissent to the principles contained in the articles I have read. If those principles were not satisfactory, and were not received with approbation, why was there not an expression of disapprobation?

Mr. BOCK, (Mr. P. yielding,) in reply to that question, said, he had expressed his disapprobation of the bills referred to in a speech delivered at the last session of Congress, and which was published in the Appendix to the Congressional Globe.

Mr. INGE was also understood to say he was opposed to that doctrine.

Mr. PHELPS. I will not run the risk of doing injustice to my friends by trusting to my memory to mention those who were favorable to that proposition.

Mr. WENTWORTH (Mr. P. yielding) stated that many of the southern members were in favor of the bill, but it was amended by adding to it the Wilmot proviso, and then southern members turned round and voted against the bill, and it was defeated.

Mr. PHELPS. Then they did right in defeating the bill. I am glad it was defeated. The proviso ought not to have been attached to it. I remember, but will not mention names, as I desire to respect the sanctity of private conversation, that many southern gentlemen were favorable to the bill reported in the Senate by Mr. DOUGLAS, with the sanction of the select committee. Nearly all were in favor of admitting California into the Union as a State. That bill, as I have shown, was strongly advocated by Father Ritchie. He urged, he implored Congress to pass it, or some similar measure, and by so doing to restore peace and good feeling throughout the country.

But I do not bring forward these facts in order

to cast censure on any one. I have brought them forward for another purpose. I declare that the editor of the "*Union*," and many of the members of the last Congress from the South, are in part responsible for the movement which has taken place in California. I have shown that as early as December, 1848, the people held several meetings and passed resolutions in favor of forming for themselves a government; that this sentiment kept constantly gaining ground, until it resulted in the election of delegates to a convention which adopted a constitution. No doubt—aye, it is free from doubt—it is certain, the favor with which those bills providing for the admission of California into the Union as a State were received by the South, and the support of that measure by the organ of the Democratic party and by other papers throughout the Union, induced every emigrant to California from the States, upon his arrival in that country, to advocate the formation of a State government. Those articles, which I have copied from the "*Union*," I presume were reproduced in the newspapers published in California, with the declaration that those were the sentiments of the Democratic party, and assuring their readers they must be the opinions of southern men, and particularly the opinions of the people of Virginia, for the veteran editor always spoke for Virginia. Indeed, having spoken for Virginia for many years, and much space in his paper having been occupied with the local politics of Virginia, it has been often remarked that Mr. Ritchie had forgotten he was not publishing a paper in Virginia. The course pursued by the "*Union*" on this question, and the favor which the proposition of admitting California into the Union seemed to meet with, gave a strong impetus to the similar sentiment which had been promulgated in California. Indeed, Mr. Ritchie may assume to himself some credit for having contributed his aid to induce the people of California to adopt a constitution and State government and demand admittance into the Union.

The people of California had demanded admittance into the Union at the time he predicted that demand would be made, and at that time when he declared it could be demanded—not as a favor, not as a concession, but as a right.

But objections had been taken to the admission of California, because her people had adopted a State constitution and formed a State government without the previous consent of Congress.

Mr. INGE, (Mr. P. yielding.) Has not Mr. Ritchie at this session of Congress opposed the admission of California into the Union?

Mr. PHELPS. I do not recollect that he has done so. But if in the opinion of Mr. Ritchie it was right to admit California into the Union as a State before the people there had adopted a constitution and formed a government, and with a greater area and less population than at present, I ask by what process of reasoning it can be shown to be wrong to admit her now?

A MEMBER. He is not good authority.

Mr. PHELPS. I have produced as my authority the editor of the organ of the Democratic party, a gentleman brought here from the State of Virginia by the last Administration to conduct that paper, and I believe the articles I have quoted expressed the views of the late Administration at that time.

It has not been considered necessary that Congress should previously give its assent to the action



of the people in adopting a State constitution and forming a State government. We have from time to time added to the Confederacy seventeen States; and if the previous assent of Congress is absolutely necessary to the formation of a State constitution by the people inhabiting the territories to authorize its admission into the Union as a State, I ask gentlemen to tell me how nine of the seventeen new States got into the Union. They adopted their constitutions without the previous assent of Congress. Without mentioning other States, Arkansas and Michigan, in 1836, pursued this course. Florida adopted her constitution in January, 1839, and was not admitted into the Union till March, 1845; and no consent had been given by Congress to the people of Florida to adopt a constitution and State government.

But if the action of the people of California had been different on the question of slavery—if the constitution of that State had recognized slavery within its limits instead of prohibiting it, we would have found, in my opinion, no objection raised to the admission of California by southern gentlemen. For the purpose of preserving as near as possible an equilibrium between the slaveholding and non-slaveholding States, I should have been better pleased if the people of California had recognized slavery. But as I recognize the right of the people in California to prohibit or establish slavery as suits their pleasure, I submit. If the people of California had recognized slavery in their constitution, and its admission into the Union had been opposed, I should have denounced the opposers as inimical to the right of the people to determine the character of their own political and domestic institutions. I should then have demanded the immediate admission of California as a right. The character of their domestic institutions does not change that principle.

When northern gentlemen have been here interrogated to know how they would vote upon the admission of California into the Union, if the people had recognized the institution of slavery, I have regretted to see some of them evade a direct answer to the question. The slavery question ought in no manner to affect the question of its admission. It rests upon other and different principles. Every man who hears the sound of my voice, if he had been in California, would have co-operated with the people there in adopting a State constitution. Self-protection and self-preservation first prompted the movement.

When mingling with my constituents, last summer, I told them I believed the people of California would adopt a State constitution, and demand admission into the Union at this session. My opinion that such a course was a proper one, was freely expressed, and I furthermore made known to them I would vote for her admission. Such are the wishes of my constituents, and their will shall be done. I also apprised them that, in my opinion, in no portion of the territory we acquired from Mexico would slavery be recognized. That opinion was expressed by the late lamented President, in his last annual message, in which he urged upon Congress the duty of providing governments for the territories. He said:

“The question is believed to be rather abstract than practical, whether slavery ever can or would exist in any portion of the acquired territory, even if it were left to the option of the slaveholding States themselves. From the nature of the climate and productions in much the larger portion of it, it is certain it could never exist, and in the remainder the probabilities are it would not.”

An objection has also been urged against the admission of California, on the ground that she has not the requisite population. I believe, sir, that the population amounts at this time from 105,000 to 115,000. The memorial from the Senators and Representatives elect from California estimate the population at about 107,069. The report of the honorable T. Butler King estimates the number, on the 1st of January last, at 115,000. We have also the estimate of the editor of the *Alta California*, who computes the number of the population, on the 1st of December last, at 94,000, adding for distant settlements, making 100,000. This was only to the 1st of December. At that time all the overland emigration of last summer had not reached the country. It has been estimated there were about 40,000 emigrants, who started for California last year by the overland route. A portion of these had been detained in the mountains, and would not have arrived at their destination before January. I say, then, that in my opinion, the population may be fairly stated at 110,000, which would entitle California to two Representatives, according to the provisions of the last apportionment act.

Another objection has been urged to the size of the State. The number of square miles within the limits of California, as defined in her constitution, is estimated by the Commissioner of the General Land Office, at one hundred and fifty-eight thousand five hundred square miles, and in the memorial of the Senators and Representatives elect from that State, at one hundred and fifty-five thousand five hundred and fifty square miles; in which are embraced the beds of all lakes, water courses, and navigable streams, within its boundaries. In the estimate of the area of those States in which public lands are situated, made by the Commissioner of the General Land Office, the beds of all lakes and navigable streams are excluded. The area of those States so given, shows the area of land—of *terra firma*, only. The area of the State of Missouri, estimated in that manner, is given as sixty-seven thousand three hundred and eighty square miles. The area within her boundaries is seventy-two thousand two hundred and seven square miles, as computed by Huta-wa. If, therefore, we exclude the beds of lakes, rivers, and water courses, from the area of California, the quantity of land of *terra firma* will probably not exceed double the area of the State of Missouri, as computed at the General Land Office.

But we have admitted Texas into the Union as a State. I was in favor of its admission. In the portion of the Union where I reside, no objection was made to its size. Its area is estimated at three hundred and twenty-five thousand square miles. California is less than one half the size of the State of Texas. But we should look not merely to the size of a State, but to the quality of the soil and its capability of sustaining, of supporting its population. California, in my opinion, with her snow-capped mountains and desert plains, has not as much arable land within its limits as has the State of Missouri. To show what proportion and quantity of productive soil it has, I make the following extracts from the memorial of the Senators and Representatives elect from that State:

“The eastern boundary of the State, so far as explored and known, runs through a desert. A small portion of the eastern slopes of the Sierra Nevada is said to be adapted to agricultural and grazing pursuits.

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"That portion of the State lying to the southward and eastward of the Sierra Nevada and the coast range, and between those mountains and the Colorado river, is believed to be an arid desert. So much as lies upon the usual emigrant trail from the Colorado to San Diego, and that further north, in the vicinity of the explorations of John C. Frémont, is known to be of that character. The general impression, therefore, is, that that part of the territory included in the State boundaries is of little or no value.

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"A glance at the map prepared by order of the United States Senate, from the surveys of John Charles Frémont, and other authorities, upon which the above calculation is based, will at once satisfy all that the topographical characteristics of that country are peculiar and novel. Two great chains of mountains, the Sierra Nevada and the coast range, traverse it in nearly its whole extent from north to south. The large valleys that lie between those two ranges, and the small lateral valleys that pierce their rugged sides in every direction, are the valuable arable portion of the land of California. Assuming, then, that two-fourths of the whole superficial area of the State are covered by mountains, that another fourth is a desert waste, and we have left one-fourth as useful for agricultural purposes; that is, thirty-eight thousand eight hundred and eighty-seven and a half square miles, or twenty-four millions eight hundred and eighty thousand square acres of arable and productive land. This estimate, in the opinion of the undersigned, is fully borne out by the topographical surveys of the country: but, anxious as they are to avoid mis-statement, they do not hesitate to assert their belief that it is quite apparent, after all due allowances, that three-fifths of the whole territory embraced in the State of California will never be susceptible of cultivation or useful to man. This, then, would give as the remaining two-fifths, sixty-two thousand two hundred and twenty square miles, or thirty-nine millions eight hundred and twenty thousand and eight hundred square acres, which would constitute the sum total of valuable arable and grazing land embraced within the boundary fixed by the constitution of the State of California, and distributed at intervals over the whole surface of the country from its extreme northern to its extreme southern limits."

It has been said that the proceedings of the people of California are anarchical and revolutionary, and therefore she ought to be remanded to a territorial form of government. Revolutionary of what government?—of this? The delegates to the Convention were all sworn to support the Constitution of the United States. It certainly is a strange revolution which commences with taking an oath to support the Constitution of the country under whose government they live and whose protection they demand. Revolutionary proceedings in which they have fully recognized the right of the United States to all the public domain within its limits! Revolutionary in maintaining that principle which is the basis of republican governments! Revolutionary in asking to be received into the Union! Revolutionary in asking that the laws of the United States be extended over them! Remand her to a territorial form of government! You might as well endeavor to cause the waters of the bold, turbulent, and angry Missouri to flow up-stream. You might as well attempt, by your fiat, to cause mountains to become valleys, the sea to become dry land, and the dry land to become sea, as to attempt to cause California to sink back into a state of territorial tutelage. The admission of California is a foregone conclusion—its destiny is written—the decree is registered—Congress will execute it. This act should have been done long since. No serious objection, in my opinion, should have been made to it. The delay has been caused by mingling the slavery question and the Wilmot proviso with it.

No one can desire more ardently than I do, the adjustment of all the questions growing out of slavery, or with which it is mingled, in a manner satisfactory to the rights and honor of the South, and in accordance with the principles of the Constitution. But I desire the question of the admission of California to be presented as a separate

and independent proposition—that it shall stand or fall upon its own merits—neither obtaining aid from, nor giving strength to any other measure. If it is right to admit that State, her admission ought not to be made dependent on any other question. If it is wrong to admit her, we ought not to burden a good measure with the question, and cause its defeat.

The bill pending in the Senate providing for the admission of California into the Union, and the establishment of territorial governments in Utah and New Mexico, and adjusting the boundary of Texas, I will not particularly discuss. Amendments have already been adopted to this bill, and it is probable others will be adopted which may materially alter its provisions. But whenever a proposition shall be presented to me which maintains our rights and honor, and is warranted by the Constitution, and neither directly nor indirectly changes slave soil to free soil, and, furthermore, makes a final and satisfactory adjustment of all the questions growing out of slavery, it shall receive my cordial support.

The Wilmot proviso—why press this upon us? It is a measure which, in my opinion, is not warranted by the Constitution; and even if it was so warranted, it must be regarded as unjust and inexpedient. My votes have been recorded against it, and if this measure is again brought to a vote, my vote will still be against it. Gentlemen of the North, some of you have said that the laws which were in force at the time of the acquisition of this territory, and which are not inconsistent with the Constitution of the United States, remain in force until repealed or changed by the proper legislative authority. Mexico abolished slavery throughout her possessions, and therefore you say slavery will not exist in our recently-acquired territories unless it shall be established by law. You say it is an institution which can exist in the territories by means of positive law only. Some of you also say, from the nature of the soil, of the climate, and of the productions of the newly-acquired territories, slavery cannot exist there—that the laws of nature, more potent than human law, forbid it. These are the positions of some of you. Now, if you are sincere in these declarations—if you believe what you say—drop the Wilmot proviso—abandon it at once. Let it die of neglect. You have no good reason to urge its passage. Mexican laws and nature will accomplish all you desire according to your own positions. Abstain from pressing it then, and let us give security and protection to the inhabitants of New Mexico and Utah. Remove that bone of contention. Keep it away from this Capitol, and we shall soon be able to hail the day when we can go on with our deliberations here, and transact the public business, already neglected by reason of our discord and dissensions, quietly and harmoniously. I shall rejoice to see that day in this Hall, when there will be a fraternity of feeling and of action, when there shall be no North, no South, no East, no West, but when every question shall be advocated, not for its sectional bearing, but for its immediate effect in promoting the good and the happiness of our constituents, and our common country.

We of the South have just cause of complaint against you. Some of you frankly admit this. The provisions of the Constitution, requiring the surrender of fugitive slaves to the owner has, by the Legislatures of some of the non-slaveholding States, been disregarded and nullified. Individ-



uals, mobs, throw obstacles in the way of their recapture. It would be ungenerous and unjust to hold States responsible for the acts of individuals. Mobs will violate and set at naught the laws of the State in which they assemble. But, we demand you shall repeal your laws on this subject, which are calculated to hinder and obstruct a compliance with the provisions of the Constitution. We demand this as a right. We require the fulfillment of the constitutional guarantee. Its expediency or propriety is not an open question. Your forefathers and mine acquiesced in it and placed it in the bond which binds us together. The Constitution recognizes the right to the services, to the labor of slaves; recognizes them as property, and provides they "shall be delivered up on claim of the party to whom such service or labor may be due." We require the law upon this subject, passed by Congress in 1793, shall be executed in its letter and spirit. And we also demand from you amendments of that law, which will better secure to our citizens the benefits of the provisions of the Constitution on this subject.

The State which I in part have the honor to represent is bounded on two sides by non-slaveholding States. The escape of slaves from Missouri to the non-slaveholding States have not, I presume, been as numerous as from the States of Kentucky, Virginia, and Maryland; and it is probable our citizens do not meet with as great difficulties in recapturing them as do the citizens of the States I have mentioned. Many of the citizens of Illinois, I know, are ready to do so, and do assist the master in arresting and carrying home his runaway slave. It is to be hoped such feelings will prevail, and that such acts will be of common occurrence whenever the occasion is presented, among the citizens of the non-slaveholding States. During this session of Congress a number of slaves made their escape from the city and county of St. Louis; they were arrested in the vicinity of Springfield, Illinois, before the owners of them had made pursuit. This was communicated by telegraph to St. Louis. The owners started for Springfield, and met their slaves on the road, going to St. Louis in custody of the persons who had arrested them. In this case no attempt had been made by those discovering the negroes to spirit them away from their masters. Such acts will go far towards preserving that comity and good feeling which ought to exist between the citizens of neighboring States. It is to be hoped such conduct will be more frequent.

The amendments in their present form proposed by the Committee of Thirteen in the Senate, to the fugitive-slave, bill pending in that body, cannot receive my support. One of those amendments proposes that Congress shall by legislation direct a suit shall be instituted in a State court between a master and his servant. It provides, that after the arrest of the fugitive slave, and in the event the

fugitive declares he is not a slave but is a freeman, and the court, judge, or commissioner, or other officer before whom he is brought, shall decide to grant a certificate empowering the removal of the fugitive to the State from which he shall have fled, that the officer granting such certificate shall require the claimant to enter into bond to the United States, in the sum of \$1,000, that the fugitive shall be taken to the county, parish, or district from whence he fled, and at the first term of the court after his return, shall be carried before a court of competent jurisdiction, and be permitted to try his right to freedom. The bond so taken is to be transmitted to the District Attorney of the United States for the district from whence the fugitive made his escape.

By what right can Congress declare a suit shall be instituted in a court of my State by my servant against me? Where is the authority for this? What part of the Constitution gives it? If the power is conceded that Congress can direct a suit to be instituted in a State court, or any other court, by a slave against his master, let me ask if Congress then does not have jurisdiction over the whole subject-matter and can therefore direct the manner and mode of trial, the nature, degree, and extent of evidence that shall be required? Although this amendment does not prescribe the nature and degree of the evidence to be offered on the trial, yet the principle contained in it would in my opinion authorize it. That legislative authority which can direct or authorize a suit to be instituted, must also have the power to regulate the trial of that suit and prescribe what evidence is admissible and competent.

When fugitive slaves are arrested in slave States at a great distance from their master's residence, they frequently declare they are free. And if they make their escape to a non-slaveholding State, it is almost certain every one of them will declare to the officer before whom they are brought, that they are free; so that in every instance of the reclamation of a fugitive slave in a free State, the master will be sure of having a freedom suit on his hands, if this amendment is adopted in its present shape. All slave States have provided for the institution of suits between the slave and his master for the purpose of trying his right to freedom. It is a matter of State legislation entirely. Congress has not the right to authorize the institution of these suits for freedom. Encroach not on the rights of the States. Avoid the establishment of a principle which may hereafter be perverted from the intention of its friends, to promote the cause of emancipation of slaves in the States by judicial acts. My views of this proposition may be erroneous, yet my confidence in the opinions expressed by me are unshaken. It is a dangerous principle, and from which I fear much harm may come to the section of the Union which I represent.